

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

SUMMARY

IN RE:

RENA O. WAGSTAFF,

Debtor.

CASE NO. 05-32096- BKC-SHF
Chapter 7 Proceeding

**ORDER PARTIALLY SUSTAINING AND PARTIALLY OVERRULING TRUSTEE'S
OBJECTION TO THE DEBTOR'S CLAIM OF EXEMPT PROPERTY**

The Debtor filed for bankruptcy on April 27, 2005. The Debtor owns a home valued at approximately \$800,000.00 with an outstanding mortgage of \$457,551.77. The property is homestead property and was purchased less than forty months pre-petition. Debtor argues that 11 U.S.C § 522(p)(1) does not apply to her because, as a Florida Resident, she does not possess the ability to "elect" state exemptions.

The Court found that a Florida resident "elects" Florida exemptions by

- 1) having chosen to reside in the State of Florida;
- 2) having chosen to purchase a residence in the State of Florida;
- 3) having chosen to make the residence his/her permanent residence; and
- 4) having availed himself/herself of the relief available under Title 11, United States Code.

Furthermore, the Court determined that the legislative history behind the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 reveal that the intent of the drafters was to close the "mansion loophole" that appeared to exist in Florida prior to the enactment. Therefore, the Court determined that the \$125,000 cap placed on the homestead exemption pursuant to U.S.C § 522(p)(1) applied to the debtor.